U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	RM 8535

Comments of the Chief Counsel for Advocacy of the United States Small Business Administration on the Notice of Proposed Rulemaking

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I. *Introduction*

March 10, 1876: Alexander Graham Bell speaks into a device and utters the immortal words, "Mr. Watson, come here, I want you." Those were the first words spoken over the telephone, a device which would transform America and the world. Provision of telephony service for the next century would be provided by numerous small local carriers and one behemoth American Telephone & Telegraph Corporation (ATT).

The year is 1948 and three scientists (Drs. Bardeen, Brattain, and Shockley) are toiling away at ATT's Bell Labs. These scientists (all of whom will win the Nobel Prize in Physics) invent the transistor, a device made of silicon which will replace the vacuum tube and shrink the size of electrical devices and usher in the age of electronics. The transistor and

its kin, the integrated circuit, would become the prime components of the computer revolution, shrinking computers from room size to those that fit on the top of a desk. The computer would play an important role in changing the face of the telecommunications industry.

January 1, 1984: ATT divests itself of its local telephone companies to become a manufacturer of telephony equipment and provider of long-distance telephone service pursuant to court order. The local telephone companies are transferred to seven large corporations known as the Regional Bell Operating Companies or RBOCs. The antitrust decree which created the RBOCs also required them to provide all potential long-distance carriers (properly known as interexchange carriers or IXCs) with the same access to the local telephone network. This equal access provision provided the booster rocket for competition in the long-distance market. Such equal access would not have been available had it not been for computerization of network signalling to identify which long-distance carrier a local telephone subscriber wished to utilize.

Competition in the IXC market, although still dominated by ATT, grew dramatically. Customers were inundated with advertisements, calling programs, and other efforts to increase

market share. Competition became so virulent that slamming became the rage among some long-distance carriers.[1]

While competition grew in the consumer and business markets, one area of long-distance service remained mired in the antediluvian notions of monopolies -- toll free 800 service. Constraints on the operations of the numbering system for transmission of telephone service in the United States prevented purchasers of 800 service from switching their IXC without changing their number.[2] Given the amount of advertising associated with these numbers (Sheraton Hotels even built a jingle around its 800 number), 800 service purchasers were unlikely to switch to a cheaper IXC if it meant losing the previous 800 number.

The year is 1992 and the five high level government officials are huddled in Room 856 of 1919 M Street, N.W. These individuals are the Commissioners of the Federal Communications Commission and they are deciding that local exchange carriers (LECs) have the capability, through use of computers and advanced

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[1] Under the Commission's rules for equal access, customers are permitted to preselect their long-distance carrier. Slamming occurs when another long-distance carrier switches the customer's preselected carrier without prior approval. Slamming is not permitted by FCC regulation.

[2] Particular three digit prefixes (the first three numbers of the seven digit number) were used to identify the particular IXC. Each IXC had a certain number of prefixes (based on the amount of market share) and if you wanted a particular number you had to go with whichever IXC controlled that particular prefix.

switching equipment (both made possible by the invention of the transistor), to permit changing 800 number IXC providers without changing the 800 number. A new era, competition in 800 service, dawned permitting purchasers to select the lowest cost provider without losing the number. The Commission has termed the ability of customers to switch carriers without changing telephone numbers as service or number portability.

The technological changes precipitating increased competition in the IXC market are penetrating the local exchange market. Computerization and miniaturization have made it possible to interconnect alternative providers of local telephone service with the LEC. The Commission adopted the instant rulemaking (NPRM) to examine the issues surrounding portability of local telephone service.

II. *The Need for Portability*

Matters of telecommunication service are never as straightforward as they seem. Portability is one of them. There are three different types of portability and portability for geographic and non-geographic based numbers[3] (i.e., similar to 800 numbers, the most common being 900 service numbers).

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[3] The typical number is related by area code and exchange to a particular geographic location. Non-geographic numbers, such as 800 or 900 series, are not related to the location of the customer purchasing the service, i.e., two identical 800 prefixes could be located 3,000 miles apart.

One type of portability is more critical than all others -- service provider portability (and also referred to as number portability in these comments). Number portability enables a customer of the LEC to switch local carriers without changing telephone numbers. It is similar to the number portability already mandated by the FCC for the 800 service.

For competition to increase in the LEC market, number portability is absolutely essential. Imagine the horror that would befall the local pizza carryout if it had to change its telephone number when it changed its local carrier. Brochures and fliers would have to be mailed with new telephone numbers. Customers with the old number would not be able to place orders. Frustration levels would run high and significant amounts of business could be lost. The pizza parlor would not be willing to incur those expenses if it had to change its telephone number every time it wanted to change carriers. Competition would be stillborn.

Nor is that horror solely the province of local establishments. Many small businesses provide services for customers across state lines, ranging from access to the Internet to wholesaling of zucchini. Advertisements would have to be changed, current customers contacted, and a method for forwarding calls would need to be established. Each of these items cost money, time, and personnel that could be better devoted to

expanding the business than the administration of telephone number changes. These businesses are as unlikely to switch local exchange providers as the neighborhood pizza parlor.

As a result, number portability is a necessary precondition for competition in the LEC market. The Commission concluded that competition in the 800 service market would not be possible without number portability and the same logic applies with even greater force in the instance of telephone number portability.

III. *The Devil is in the Details*

The Commission clearly is cognizant of the importance of number portability for an effectively competitive market.[4] The devil of the problem is in the details of defining portability. For example, a LEC may permit portability of numbers but charge the competitor five dollars extra a month to provide portability. No business would make that switch even though they could keep the same number because it would cost more than current telephone service. Number portability would exist in theory but would be absent in reality. A portability regime must be defined in a manner designed to ensure that all local exchange service providers are competing on a level playing field under the same rules.

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[4] H.R. 1555 and S. 652 also contain provisions mandating number portability.

First, the Office of Advocacy does not believe that the Commission should attempt to solve this problem by itself. While the Office of Advocacy has the highest regard for the FCC's staff, the Commission realized that its staff was not capable of administering the current telephone plan and established the North American Numbering Plan (NANP) Administrator to perform that function. The Commission also erected a separate body, the National Exchange Carrier Association, for the submission of tariffs by small LECs. The issues related to number portability are extremely complex and entail interactions among various types of providers (the current LEC, potential competitors, and IXCs), state regulators, and the Commission. The Office of Advocacy suggests that an organization similar to the NANP Administrator be established for the purpose of resolving the complex technical problems associated with number portability.

Second, the Commission must ensure that portability occurs on a level playing field. Number portability must be established in a manner that does not provide a significant cost advantage to the incumbent LEC. One potential solution might be for every consumer to pay for the development of the database and computer network needed to provide number portability. Even customers who do not switch will benefit from the efforts of the incumbent LEC

to provide lower costs, better service, or new communication options.[5]

Therefore, a charge to all customers, similar to the current subscriber line charge, should be adopted to pay for the costs of constructing and operating the database. This will ensure that the incumbent does not have a cost advantage in the provision of local service.

Third, the Office of Advocacy believes that number portability should be required for all Tier 1 LECs, i.e., those with more than 100 million dollars in gross revenue from regulated service. For all other LECs, number portability should be optional. Most of the non-Tier 1 LECs provide service in low-density high-cost areas in which multiple providers may simply serve to siphon off the best customers leaving small business and residential customers to absorb the costs of the network. The Office of Advocacy made a similar request based on a similar rationale in the Commission's proceeding to mandate interconnection. Since the FCC adopted the Advocacy

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[5] Basic economic theory teaches that those who obtain a benefit in the marketplace should pay for that benefit. Competition in the local market will reduce the total cost of telephone communication because the incumbent carrier will not raise prices for fear that another carrier, with lower prices, will obtain the business. Thus, the benefits of competition redound to all customers, whether they switch or not; and all customers should pay for that benefit.

recommendation in that instance, no sound principle exists to reject it in this rulemaking.

However, the exemption should not be a blanket one. If the non-Tier 1 LEC decides to enter the interexchange market, i.e., then it must provide number portability to those IXCs wishing to enter its local exchange market. Any other result would permit the LEC to have a protected local market to subsidize entry into an unregulated free market. The obvious imbalance in that situation need no further expatiation to the FCC.

The other issues raised by the Commission in the NPRM are certainly significant. However, the Office of Advocacy believes those issues, such as call processing scenarios, portability of ISDN service, and whether to adopt an interim or final number portability problem, should await the resolution of basic issues into number portability. Such a resolution should be done with all deliberate speed.

IV. *Conclusion*

The Office of Advocacy commends the Commission for undertaking the study of number portability. The primary concern of the Office of Advocacy is that number portability be accomplished quickly and in a manner designed to foster competition with the incumbent LEC. Such competition will be

beneficial to all customers, particularly small business customers.

Respectfully submitted,

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